No. 75-804

In the Supreme Court of the United States

OCTOBER TERM, 1976

JOY A. FARMER, SPECIAL ADMINISTRATOR OF THE ESTATE OF RICHARD T. HILL,

PETITIONER

v.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 25, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

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INTEREST OF THE NATIONAL LABOR RELATIONS BOARD

The question presented in this case is whether the National Labor Relations Act (NLRA) preempts a state court suit for damages for emotional and physical distress brought by a union member against the union and its officials, alleging that they threatened to discriminate against him in referrals for employment out of the union hiring hall because of his intra-union political activity against the union leadership. Relying on this Court's decisions in *San Diego Building Trades*

Council v. *Garmon*, 359 U.S. 236, *Plumbers' Union* v. *Borden*, 373 U.S. 690, *Iron Workers Union* v. *Perko*, 373 U.S. 701, and *Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, the court below held the action preempted by the NLRA. The National Labor Relations Board believes that this ruling is correct and should be upheld by this Court.

Protection of employees against discrimination in employment because of their union activities, whether caused by employers or unions, is central to the Board's regulatory function. The Board thus has a significant interest in the proper application of the preemption doctrine, which is designed to preclude interference with the uniform administration of federal law by conflicting state rules and remedies.

STATEMENT

The United Brotherhood of Carpenters and Joiners of America, Local 25 (the Union) operates an exclusive hiring hall for referral of carpenters in the Los Angeles area. In April 1969, Richard T. Hill,[1] a member of the Union, filed the instant action in the Superior Court of the State of California for the County of Los Angeles, seeking damages against the Union, the District Council and the International with which the Union was affiliated, and certain officials of the Union. Count two of the amended complaint alleged, *inter alia*, that (A. 9-10):

[1] Mr. Hill, the original petitioner in this case, died after the petition for a writ of certiorari was granted. This Court subsequently granted a motion to substitute Joy A. Farmer, special administrator of Hill's estate, as petitioner. For convenience, we occasionally use the term "petitioner" to refer to Hill.

> Defendants * * * made repeated oral threats to Plaintiff to the effect that as long as they controlled the job-dispatching procedures that Plaintiff would be and he was given inferior assignments and be bypassed for work assignments. * * * Defendants * * * repeatedly threatened Plaintiff with actual or defacto expulsion from the union in retaliation for his political activities, and further threatened to deprieve [*sic*] Plaintiff of his ability to earn a living as a carpenter.
>
> Defendants * * * knew or reasonably should have known or expected that their outrageous conduct, threats, intimidation, and words would result in severe emotional, mental and physical damage to Plaintiff.
>
> * * * * *
>
> As a proximate result of the intentional and wrongful discriminatory conduct practiced by Defendants, * * * Plaintiff has suffered a nervous breakdown, grievous mental anguish and bodily injury making him sick, sore and lame * * *.

Hill sought $500,000 in actual, and $500,000 in punitive, damages (A. 11).[2]

[2] Hill's complaint contained four separate causes of action. The trial court sustained a demurrer to the other three counts on the ground that federal law preempted jurisdiction over them (A. 19). The first count alleged that the Union actually discriminated against Hill in referrals for employment because of his dissident intra-union political activities; the third alleged that the Union breached the hiring hall provisions of the collective bargaining agreement between it and a contractor's association by failing to refer Hill on a non-discriminatory basis; and the fourth alleged that such failure to conform to the collective agreement also con-

Hill's attorney told the jury in his opening statement that "it is important that you understand the hiring hall mechanism * * * so you can comprehend the nature of the conduct that followed" (A. 101). The bulk of the 2,800 pages of the trial transcript was devoted to the operation of the hiring hall (see, *e.g.*, A. 77-87, 108-148, 272-338). Hill attempted to show its discriminatory operation, particularly as to him; the Union rebutted by attempting to show, *inter alia*, that Hill's lack of employment was due to his refusal to accept referrals or the refusal of particular employers to accept him for employment.

Apart from Hill's own testimony,[3] his case consisted largely of an examination of Business Agent Daley (A. 272-550). Relying on dispatch records from the hiring hall, Hill attempted to prove that Daley systematically awarded referrals out of turn to his political allies by such means as falsely representing that they had been orally requested by the employer to whose job they

stituted a breach of the membership contract between Hill and the Union (A. 1-9, 11-15).

[3] Hill testified that he was elected in 1965 to a three-year term of office as vice president of the Union. Thereafter he began to disagree with Union Business Agent Earl Daley and other Union officials over certain internal union policies. As a result, Hill testified, he began to experience discrimination in referrals from the hiring hall, which caused him to complain about the operation of the hall both within the Union and to the District Council and the International. According to Hill, his complaints led to verbal abuse and threats of job discrimination by Daley and other Union officials, and to a continuation of the referral discrimination through such tactics as removing his name from the top of the out-of-work list and placing it at the bottom, referring him to jobs of short duration when more desirable work was available, and referring him to jobs for which he was not qualified (A. 149-154, 189-195, 238-242, 258-263).

were dispatched. Petitioner also attempted to show that the Union's policy prohibited oral requests (A. 369) and that the hiring hall records did not support the contention that such requests had been made.[4]

Daley, on the other hand, contended that sloppy record keeping, rather than discriminatory treatment, explained why the records did not reflect the employer requests that accounted for the departures from the hiring hall sign-up lists (A. 293-383, 405-421, 441-462, 470-471). The Union also attempted to discredit Hill's contention that he was requested for a job to which he was not referred (A. 560-562, 575-576); to establish that Hill's priority on the list was legitimately dropped because he refused employment (A. 563-566, 590); and to show that he was an erratic and difficult individual whose lack of employment was a function of his own personality problems (A. 580-590).

In addition, it was shown at the trial that Hill had filed charges with the Board in May 1967, alleging that the Union discriminated against him in violation of Section 8(b)(2) and (1)(A) of the NLRA, 29 U.S.C. 158(b)(2) and (1)(A), by refusing to honor an employer's request that he be referred for employment to the Dinwiddy-Simpson construction job on the Crocker Citizens Bank Building. A complaint issued, an unfair labor practice hearing was held, and the Board awarded Hill $2,517 in back pay. Hill testified that his filing of unfair labor practice charges led to further threats of

[4] Employers were allowed to request a certain number of employees by name. The testimony was inconclusive as to whether such requests were required to be in writing (A. 145-148, 295-297, 298-301, 359-369, 572-574).

economic discrimination by Union officials (A. 241-247).

In its instructions to the jury, the trial court explained that the plaintiff had to prove that defendants "intentionally and by outrageous conduct inflicted upon plaintiff severe emotional distress" (A. 34). The court defined "severe emotional distress" as "any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worr[y]" (A. 40). Although the court instructed the jury that no damages could be awarded for lost wages (A. 41), it refused to give a requested instruction that the jury could not consider discrimination relating to Union dispatching procedures (A. 60). The court also instructed the jury that (A. 41-42):

> There has been received in evidence the fact that Plaintiff filed a complaint within the National Labor Relations Board, a governmental agency, and received an award covering wages he would have earned on the Dinwiddy-Simpson job had he been dispatched on May 1, 1967.
>
> The National Labor Relations Board is empowered by law to render awards to compensate for lost wages where it finds that a claimant was unreasonably denied employment in violation of certain applicable federal laws.
>
> The Plaintiff in this action charges the intentional [infliction] of severe emotional distress and seeks damages for pain and suffering, for resulting medical expenses incurred, and for punitive damages. The National Labor Relations Board has

> limited jurisdiction which does not include the authority to render awards for any of the just-mentioned items of damage.

The jury returned a verdict of $7,500 actual damages and $175,000 punitive damages against the Union, Daley, and the District Council (A. 68).[5] The trial court entered a judgment on the verdict (A. 67-69).

The California Court of Appeal reversed, holding, on the authority of *Garmon, Borden, Perko,* and *Lockridge, supra,* that the action was preempted by the NLRA (Pet. App. A1-A28). The court stated (Pet. App. A23):

> The fact that in the case at bar Hill sought damages for mental anguish should not change the result here any more than such a claim for mental anguish changed the result in *Borden, supra* and *Lockridge, supra.* It is the "crux" of the causes of action, the "conduct" which is complained of which controls whether federal or state courts have jurisdiction, not the type of damage which is caused by such conduct.

The court added (Pet. App. A24):

> Here there is no doubt in our view that the "crux" of the conduct of the defendants complained of by Hill related directly or indirectly to his employment and work assignments. The key allegation of his complaint was that the defendants "made repeated oral threats to the effect that as

[5] Hill voluntarily dismissed his complaint with respect to the International and one Union official, the court dismissed as to another official, and the jury found in favor of two other officials (A. 68).

long as they controlled job dispatching procedures that [Hill] would be *and he was given* inferior assignments and be bypassed for work assignments." (Emphasis ours.) * * * That "as a proximate result of the intentional and wrongful *discriminatory conduct*" (emphasis ours) Hill suffered certain damages.[6]

The Supreme Court of California denied review of the Court of Appeal decision (Pet. App. B1).

SUMMARY OF ARGUMENT

A. Under the principles established by this Court in *San Diego Bldg. Trades Council* v. *Garmon,* 359 U.S. 236, and recently reaffirmed in *Motor Coach Employees* v. *Lockridge,* 403 U.S. 274, the states may not regulate conduct that is "plainly within the central aim of federal regulation" (359 U.S. at 244) and that arguably is either prohibited by Section 8 or protected by Section 7 of the NLRA. The court below properly held the present suit preempted under those principles.

B. Count two of the complaint, upon which the award of damages in this case was predicated, alleged that the Union engaged in "oral threats" of discrimination against Hill in referrals for employment out of the hiring hall (established under the collective bargaining agreement) because of his dissident intra-union political activity. The opening statement of Hill's attorney to the jury emphasized that it was necessary to understand the operation of the hiring hall in order to comprehend the nature of the wrong committed by the Union. Despite the Union's objections, the bulk of the testimony was devoted to describing the Union's dispatching procedures. The trial court refused to instruct the jury that it could not consider discriminatory hiring practices in reaching its verdict. In these circumstances, the court below properly concluded that "the 'crux' of the conduct of the [Union] complained of by Hill related directly or indirectly to his employment and work assignments" (Pet. App. A24). The threats and verbal abuse that allegedly caused Hill's emotional and physical distress were directly related to and inseparable from the claimed employment discrimination.

C. Section 7 of the NLRA grants employees the right "to form, join, or assist labor organizations," and the right "to refrain" from such activities. Sections 8(a)(1) and 8(a)(3) of the Act prohibit an employer from abridging Section 7 rights by restraint or coercion or by discrimination in employment "to encourage or discourage membership in any labor organization," and Sections 8(b)(1)(A) and 8(b)(2) similarly prohibit such conduct on the part of unions. These provisions embody a central "policy of the Act * * * to insulate employees' jobs from their organizational rights. Thus §§ 8(a)(3) and 8(b)(2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood." *Radio Officers' Union* v. *National Labor Relations Board,* 347 U.S. 17, 40. In numerous cases, the Board,

[6] Finally, the court found that, "[a]lthough the complaint in the case at bar makes casual reference to threatened union expulsion, it is clear that no expulsion in fact occurred and that the primary thrust of the complaint and the evidence (the 'crux' of the case) arguably constituted unfair labor practices" (Pet. App. A27).

with court approval, has found that a union engaged in discrimination proscribed by the Act by causing employees to be discharged or denied employment opportunities, or threatening to do so, either because the employees were not union members or because they had failed to comply with union rules or had incurred the displeasure of the union leadership.

At the same time, the Act recognizes the union's right to negotiate with the employer a contract provision making the union the exclusive source of referrals for employment and providing for referral on the basis of neutral criteria. *Local 357, Teamsters* v. *National Labor Relations Board,* 365 U.S. 667. A state may not prohibit such federally sanctioned referral systems.

D. Accordingly, if, as Hill alleged, the Union refused to refer him for employment, or referred him to undesirable jobs, because he had opposed the union leadership, such discriminatory use of the hiring hall constituted an unfair labor practice under Sections 8(b)(2) and 8(b)(1)(A) of the NLRA. The conduct complained of is no less an unfair labor practice because it allegedly embraced a series of acts occurring over a long period of time. Sections 8(b)(2) and 8(b)(1)(A) are not limited to single incidents of discrimination but also proscribe a course of actual or threatened discrimination. If, on the other hand, the Union were correct in asserting that it administered the hiring hall in a non-discriminatory manner and that Hill's failure to obtain work resulted from his refusal to accept legitimate referrals and his failure to abide by valid hiring hall regulations, then its administration of the hiring hall would be sanctioned by the Act.

Thus, all the considerations that underlie the *Garmon* doctrine are applicable here. The subject matter—the use of union hiring halls to effect job discrimination based on improper union considerations—is one with which Congress dealt directly and comprehensively in the NLRA. State regulation involves the danger not only of conflicting remedies, but also of inconsistent determinations of the lawfulness of the union conduct. The danger is enhanced here by the difficulty and complexity of the issues to be resolved.

The potential for impairing the federal regulatory scheme is not lessened by the fact that the state court applied its own tort law in place of NLRA substantive principles. "Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes." *Garmon, supra,* 359 U.S. at 244. Nor is it significant that the state court awarded damages for injuries that the Board could not redress. Since "remedies form an ingredient of any integrated scheme of regulation, to allow the State to grant a remedy here which has been withheld from the National Labor Relations Board only accentuates the danger of conflict." *Id.* at 247.

E. The present suit does not fall within the exceptions to *Garmon* recognized in *Linn* v. *Plant Guard Workers,* 383 U.S. 53, and *Machinists* v. *Gonzales,* 356 U.S. 617.

Linn sustained the power of a state court to award damages for malicious defamation occurring in a labor dispute. The Court did so because, "in spite of the force of the policies *Garmon* seeks to promote," it

could not conscientiously presume "that Congress meant to intrude so deeply into areas traditionally left to local law." *Lockridge, supra,* 403 U.S. at 297. Moreover, it found that exercise of state jurisdiction over a defamatory statement "issued with knowledge of its falsity, or with reckless disregard of whether it was true or false" (*Linn, supra,* 383 U.S. at 61), "would be a 'merely peripheral concern of the Labor Management Relations Act' " (*ibid.*). In contrast, the tort of intentional infliction of emotional distress is a relatively recent cause of action whose roots in state law are not as deep as those of the tort of defamation. And a state remedy for "outrageous" conduct that is directly related to allegations of employment discrimination is not "peripheral" to, but imperils, the federal regulatory scheme.

In *Gonzales, supra,* the Court sustained the power of a state court to entertain a suit by a union member claiming that he had been expelled from the union in violation of the union's constitution and bylaws and to order both his reinstatement in the union and damages for wages lost due to the revocation of membership. However, *Gonzales* "was focused on purely internal union matters, *i.e.,* on relations between the individual plaintiff and the union not having to do directly with matters of employment," and "the principal relief sought was restoration of union membership rights"; by contrast, the " 'crux' of the action [here] concerned [Hill's] employment relations and involved conduct arguably subject to the Board's jurisdiction." *Plumbers' Union* v. *Borden,* 373 U.S. 690, 697.

F. Members of this Court and commentators have expressed reservations about the efficacy of the *Garmon* principles, particularly in the area of union-member, as opposed to labor-management, relations. We submit, however, that the considerations which prompted and support the *Garmon* doctrine warrant its continued application at least where, as here, the union-member dispute is not "focused on purely internal matters" but has to do "directly with matters of employment." *Borden, supra,* 373 U.S. at 697.

ARGUMENT

A STATE COURT SUIT FOR DAMAGES FOR ALLEGED DISCRIMINATION BY A UNION IN JOB REFERRALS IS PREEMPTED BY THE NATIONAL LABOR RELATIONS ACT

A. Under The *Garmon* Doctrine, The States Are Ordinarily Precluded From Regulating Activity Which "Arguably" Is Either Prohibited By Section 8, Or Protected By Section 7, Of The NLRA

In *Lodge 76, International Association of Machinists* v. *Wisconsin Employment Relations Commission,* No. 75-185, decided June 25, 1976, this Court observed that, in the labor relations area, "[c]ases that have held state authority to be pre-empted by federal law tend to fall into one of two categories: (1) those that reflect the concern that 'one forum would enjoin, as illegal, conduct which the other forum would find legal' and (2) those that reflect the concern 'that the [application of state law by] state courts would restrict the

exercise of rights guaranteed by the Federal Acts' " (slip op. 5-6). The first category involves "preemption based predominantly on the primary jurisdiction of the Board"; the preemption analysis in the second category "focus[es] upon the crucial inquiry whether Congress intended that the conduct involved be unregulated because left 'to be controlled by the free play of economic forces' " (slip op. 6-7). The present case involves essentially the first category of preemption.[7]

The line of analysis relevant to that category was developed in *San Diego Bldg. Trades Council* v. *Garmon,* 359 U.S. 236, and was recently reaffirmed in *Motor Coach Employees* v. *Lockridge,* 403 U.S. 274.[8] As the Court stated in *Lockridge* (*id.* at 288-289):

> The rationale for pre-emption * * * rests in large measure upon our determination that when it set down a federal labor policy Congress plainly meant to do more than simply to alter the then-

[7] *Lodge 76* involved the second category. The Court found that the union's refusal to work overtime in furtherance of its bargaining position was conduct that Congress intended to leave unregulated.

[8] In *Garmon,* the Court held that the NLRA preempted a state court suit by an employer, predicated on a tort theory, to recover damages for injuries caused by union picketing to compel recognition and execution of a collective bargaining agreement. In *Lockridge,* the Court held that the Act preempted a state court suit brought by an employee against the union to recover damages for violating the union's constitution and general laws (and thereby the membership contract between the union and the employee) by causing the employee to be discharged for failure to maintain good standing membership as required by the union security clause in the collective bargaining agreement.

> prevailing substantive law. It sought as well to restructure fundamentally the processes for effectuating that policy, deliberately placing the responsibility for applying and developing this comprehensive legal system in the hands of an expert administrative body rather than the federalized judicial system [footnote omitted]. Thus, that a local court, while adjudicating a labor dispute also within the jurisdiction of the NLRB, may purport to apply legal rules identical to those prescribed in the federal Act or may eschew the authority to define or apply principles specifically developed to regulate labor relations does not mean that all relevant potential for debilitating conflict is absent.[9]

"Conflict in technique," the Court added, "can be fully as disruptive to the system Congress erected as conflict in overt policy. * * * The technique of administration and the range and nature of those remedies that are and are not available is a fundamental part and parcel of the operative legal system established by the National Labor Relations Act" (*id.* at 287).

The foregoing policy considerations, the need for "a rule capable of relatively easy application, so that lower courts may largely police themselves" (*id.* at 290), and the failure of alternative approaches to the problem (*id.* at 290-291) led the Court to hold in *Garmon,* 359 U.S. at 244, and to reaffirm in *Lockridge,* 403 U.S. at 291, that:

[9] See also *Garner* v. *Teamsters Union,* 346 U.S. 485, 490-491.

> When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by §7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law.

We shall show that, contrary to petitioner's contentions, (1) the crux of the state court complaint involved conduct "plainly within the central aim of federal regulation" (*Garmon, supra,* 359 U.S. at 244), either prohibited by Section 8 or protected by Section 7 of the NLRA; (2) the policy considerations that underlie the *Garmon* doctrine likewise justify a finding of preemption here; and (3) the suit does not come within the exceptions recognized in *Garmon*.[10]

[10] In *Garmon*, the Court indicated that it would not "find withdrawal from the States of power to regulate where the activity regulated was a merely peripheral concern of the Labor Management Relations Act • • • [o]r where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act" (359 U.S. at 243-244).

B. The Crux Of The State Court Complaint Alleged, And The Proof Adduced Sought To Establish, That The Union Had Discriminated Against Hill In Job Referrals Because Of His Dissident Union Activity

Count one of the complaint, to which a demurrer was sustained (n. 2, *supra*), alleged that the Union had discriminated against Hill in referrals for employment out of the hiring hall because of his dissident intra-union political activity. Count two of the complaint, the predicate for the jury's award of damages, essentially differs from the first count in only one respect: instead of alleging that the Union had actually discriminated against Hill in referrals for employment, it alleged that the Union engaged in "oral threats" of such discrimination (*supra,* p. 3)." Moreover, the purported proof of the threats alleged in count two involved essentially the same evidence as would be offered to prove the actual discrimination alleged in count one.

Thus, as shown above (pp. 4-5), Hill's attorney emphasized to the jury in his opening statement the importance of understanding the operation of the hiring hall in order to comprehend the nature of the wrong committed by the Union, and most of the testimony was devoted to that end. The trial court refused to instruct the jury that it could not consider discriminatory hiring practices in reaching its verdict (*supra,* p. 6). Indeed, petitioner now asserts that, in addition to "numerous and continuing threats," the evidence showed, "[m]ore significantly," that the campaign against Hill "involved refusal to dispatch

[11] Although count two also alleged that the Union "repeatedly threatened Plaintiff with actual or defacto expulsion from the union" (*supra,* p. 3), the court below found that "no expulsion in fact occurred" (Pet. App. A27).

Petitioner from the Local's hiring hall to any but the briefest and least desirable jobs, * * * in contravention of long-established hiring hall practices" (Br. 6).[12]

In sum, under count two, no less than under count one, the jury was asked to evaluate the Union's operation of the hiring hall and, in particular, its treatment of Hill.[13] On this record, the Court of Appeal correctly concluded that "[h]ere there is no doubt * * * that the 'crux' of the conduct of the [Union] complained of by Hill related directly or indirectly to his employment and work assignments" (Pet. App. A24).

[12] Petitioner contends (Br. 50) that the Union's misconduct encompassed not only job discrimination, but also a "steady barrage of insults, threats and vituperation and at least one minor battery." The only threat alleged in count two of the complaint is a threat of job discrimination (*supra*, p. 3). The alleged insults apparently refer to Hill's testimony that when he complained of hiring procedures Daley called him a "jerk," "knothead," and "idiot" and told him "to take his book and clear out if he didn't like it" (Tr. 492; and see Tr. 504-505, 528-529). The alleged battery apparently refers to an incident in which Daley jostled Hill in the hiring hall because he thought Hill had called him a son-of-a-bitch (Tr. 1063-1064). Petitioner's further assertion (Br. 50) that the alleged union misconduct was not motivated by internal union dissension, but by "personal hatred and spite, indulged in for their own sake," is not borne out by the record. Petitioner's own evidence indicates that Daley habitually favored his political allies in making referrals from the hall and that Hill was not an isolated victim of referral discrimination (see *supra*, p. 4).

[13] This case thus does not present the question whether a state court would have power to award damages for emotional and physical distress resulting from threats or verbal abuse by a union official that are unrelated to, or separable from, alleged union action causing employment discrimination proscribed by the NLRA. Cf. *Alcorn* v. *Anbro Engineering, Inc.*, 2 Cal. 3d 493, 86 Cal. Rptr. 88, 468 P. 2d 216 (in which the preemption issue was not raised), and the other cases cited at Pet. Br. 58-59.

C. The NLRA Bars Discrimination In Employment Directed At Union Members No Less Than At Employees Seeking To Join A Union; At The Same Time, The Act Permits The Operation Of Union Hiring Halls Based On Neutral Referral Criteria

Petitioner's contention that the interests sought to be protected by the *Garmon* doctrine would not be impaired by permitting a state court to entertain and adjudicate the complaint here rests principally on two assumptions: (1) that, since the NLRA is basically concerned with organizational activity and collective bargaining, union discrimination in employment is outside the Act's scope except to the limited extent that the discrimination is motivated by organizational concerns (Br. 20-33, 49-50); (2) that there is no possibility that the Union conduct was either actually or arguably protected under Section 7 of the Act (Br. 41, 48-49). Both assumptions are incorrect.

1. Section 7 of the NLRA, as amended in 1947, grants employees the right "to form, join, or assist labor organizations," and the right "to refrain" from such activities. Sections 8(a)(1) and 8(a)(3) of the Act prohibit an employer from abridging Section 7 rights by restraint or coercion or by discrimination in employment "to encourage or discourage membership in any labor organization," and Sections 8(b)(1)(A) and 8(b)(2) similarly prohibit such conduct on the part of unions. A proviso to Section 8(a)(3) permits the employer and the union representative to enter into a union security agreement requiring employees to join the union after 30 days of employment, but

prohibits discharge under such agreements if membership "was not available to the employee on the same terms and conditions generally applicable to other members" or if "membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

These provisions, on their face, evidence a congressional intention to reach "every practice, act, source or institution which in fact is used to encourage and discourage union membership by discrimination in regard to hire or tenure, term or condition of employment." *Local 357, Teamsters* v. *National Labor Relations Board,* 365 U.S. 667, 676. The legislative history confirms that, in barring such discrimination, Congress sought to protect, not only employees who were seeking to join a union, but also those who were already union members. See Cox, *Labor Law Preemption Revisited,* 85 Harv. L. Rev. 1337, 1373 (1972).

In explaining Sections 8(a)(3) and 8(b)(2), and their relation to the proviso to Section 8(b)(1)(A)—which preserves the union's right "to prescribe its own rules with respect to the acquisition or retention of [union] membership" (see Pet. Br. 24-25)—the Senate Report stated (S. Rep. No. 105, 80th Cong., 1st Sess. 20, 1 Leg. Hist. 426):[14]

> The committee did not desire to limit the labor organization with respect to either its selection of membership or expulsion therefrom. But the committee did wish to protect the employee in his job if unreasonably expelled or denied membership.

[14] "Leg. Hist." refers to the Legislative History of the Labor Management Relations Act, 1947 (GPO, 1948).

The Report added that "unions are free to adopt whatever membership provisions they desire, but that they may not rely upon action taken pursuant to those provisions in effecting the discharge of, or other job discrimination against, an employee" (S. Rep. No. 105, *supra,* at 21, 1 Leg. Hist. 427).

On the floor of the Senate, Senator Pepper protested that Sections 8(a)(3) and 8(b)(2) would:

> * * * deny [to a union] the right to protect itself against a man in the union who betrays the objectives of the union, who violates, perhaps, the constitution of the union or the bylaws of the union, and is convicted by his peers and fellow members of having an antiunion and an antisocial attitude toward the workers in that organization. [93 Cong. Rec. 4193, 2 Leg. Hist. 1097.]

Senator Taft replied that the union would still be able to discipline a member; it could not, however, "make his employer discharge him from his job and throw him out of work" (*ibid.*).

Congress sought by these provisions to curb several specific instances of abuse made possible by a union's control over employment. Those abuses included causing the discharge of a member for testifying against a union shop steward,[15] for refusing to contribute to a union fund,[16] or for attempting to run for office

[15] S. Rep. No. 105, *supra,* at 6-7, 1 Leg. Hist. 412-413; 93 Cong. Rec. 3837, 4135, 4193, 4886, 2 Leg. Hist. 1010, 1062, 1096, 1420.

[16] 93 Cong. Rec. 4135, 4432, 2 Leg. Hist. 1062, 1199.

against incumbent officers.[17] Senator Taft, referring to "a member of a union who displays an antiunion attitude," stated (93 Cong. Rec. 4191, 2 Leg. Hist. 1094):

> It is contended that the employer should be obliged to discharge the man because the union does not like him. That is what we are trying to prevent. I do not see why a union should have such power over a man in that situation.

In sum, these provisions embody "[t]he policy of the Act * * * to insulate employees' jobs from their organizational rights. Thus §§ 8(a)(3) and 8(b)(2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood." *Radio Officers' Union* v. *National Labor Relations Board,* 347 U.S. 17, 40. "Congress recognized the validity of unions' concern about 'free riders,' *i.e.,* employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union, and gave unions the power to contract to meet that problem while withholding from unions the power to cause the discharge of employees for any other reason. * * * No other discrimination aimed at encouraging employees to join, retain membership, or stay in good standing in a union is condoned." *Id.* at 41-42 (footnotes omitted).

Accordingly, in numerous cases (see App., *infra,* pp.

[17] 93 Cong. Rec. 4135, 2 Leg. Hist. 1062.

51-61),[18] the Board, with court approval, has found that a union has engaged in discrimination proscribed by the NLRA where it has caused employees to be discharged or to be denied employment opportunities, not only because of their lack of union membership, but because, though members, they had failed to comply with union rules or had incurred the displeasure of the union leadership.

2. While a union cannot by discrimination in employment opportunities encourage adherence to union rules and policies, Section 7 of the NLRA—in conferring on employees the right to select a union and, through it, to engage in collective bargaining—recognizes the union's right to negotiate with the employer a contract provision making the union the exclusive source of referrals for employment.

In *Local 357, Teamsters* v. *National Labor Relations Board,* 365 U.S. 667, the Court acknowledged that "the very existence of [a union] hiring hall encourages union membership" (*id.* at 675) and that Congress intended to regulate certain abuses (particularly the closed shop) that had occurred in their operation. The Court concluded, however, that Congress did not intend to outlaw hiring halls as such. Hiring halls, the Court stated, "ha[ve] served well both labor and management—particularly in the maritime field and in the building and construction industry. In the latter the contractor who frequently is a stranger to the area where the work is done requires a 'central source' for

[18] The appendix to this brief, *infra,* pp. 51-61, lists cases decided by the Board involving charges of unlawful discrimination growing out of union control over hiring or employment practices.

his employment needs; and a man looking for a job finds in the hiring hall 'at least a minimum guarantee of continued employment' " (*id.* at 672-673; footnotes omitted). The Court therefore held that a contractually sanctioned exclusive hiring hall was not unlawful under the NLRA in the absence of a showing that it was operated so as to prefer union members or those supporting union policies (*id.* at 676-677).

It has also been held that a union's demand for a contract clause providing that referrals for employment would be made exclusively through a union hiring hall, with the union selecting applicants on a nondiscriminatory basis, is a mandatory subject of collective bargaining under Section 8(d) of the NLRA, 29 U.S.C. 158(d),[19] and thus beyond the authority of a state to prohibit. *National Labor Relations Board* v. *Tom Joyce Floors, Inc.*, 353 F. 2d 768, 769-771 (C.A. 9); *National Labor Relations Board* v. *Houston Chapter, Associated General Contractors of America, Inc.*, 349 F. 2d 449 (C.A. 5), certiorari denied, 382 U.S. 1026. Cf. *Local 24, Teamsters* v. *Oliver*, 358 U.S. 283.

3. The determination whether a hiring hall is being operated in a manner contrary to the congressional policy against employment discrimination often pre-

[19] See also Section 8(f) of the Act, 29 U.S.C. 158(f), which provides that it shall not be an unfair labor practice for a union and an employer engaged in the building and construction industry to enter into an agreement that "requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment," and that "specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area."

sents complex questions of fact and law. Facially neutral referral provisions may perpetuate previous unlawful practices [20] or, because of the character of the industry, may operate to prefer union members over non-members.[21] More typically, and as was alleged in the instant case, benign referral provisions may be administered in a discriminatory fashion.[22]

Moreover, the determination whether alleged instances of preferential referral actually are grounded in such lawful considerations as seniority, residence, skill, or experience, or instead are based on such unlawful considerations as union membership or loyalty to incumbent officers, often may involve difficult questions of fact.[23]

[20] See, *e.g.*, *National Labor Relations Board* v. *Local 269, IBEW*, 357 F. 2d 51, 55-56 (C.A. 3).

[21] See, *e.g.*, *National Labor Relations Board* v. *Local Union No. 450*, 281 F. 2d 313, 315 (C.A. 5), certiorari denied, 366 U.S. 909; and see *International Photographers of the Motion Picture Industries, Local 659*, 197 NLRB 1187, 1189-1190, enforced, 477 F. 2d 450 (C.A.D.C.), certiorari denied, 414 U.S. 1157.

[22] See, *e.g.*, *International Longshoremen's Local 12*, 155 NLRB 1042, enforced, 378 F. 2d 125, 129 (C.A. 9); *United Industrial Workers of North America* (*Sea Land Service, Inc.*), 207 NLRB 958; *Local 383, Lathers Union*, 176 NLRB 410.

[23] In the following cases, the Board dismissed allegations of discrimination based on dissidence or ill will of union agents as unsupported by the evidence: *Local Union 456, Electrical Workers*, 183 NLRB 1277, n. 1, 1278-1280; *Plumbers Local 454*, 176 NLRB 896, 900-902; *Plumbing & Pipefitting Local 389 (Scheurer Engineering Co., Inc.)*, 176 NLRB 402, 404-405; *Int'l Hod Carriers, Building, etc., Local 341*, 146 NLRB 1358, 1370-1371. Compare the following cases, where discriminatory treatment of dissidents was found as alleged: *Carpenters District Council of New Orleans*, 182 NLRB 49, 56; *National Maritime Union*, 177 NLRB 615, 627-630, enforced, 423 F. 2d 625 (C.A. 2); *Int'l Assoc. of Bridge, etc., Workers, Local 350*, 164 NLRB 644.

Finally, assessing the lawfulness of referral preference criteria may implicate questions of policy. Referral criteria must be rational, non-arbitrary, and non-invidious. The Board must determine whether the union has a legitimate purpose in using the challenged criteria and, if so, whether that purpose is sufficient to outweigh the resultant injury to employee rights.[24]

These "difficult and complex" questions bearing on "the operation of union hiring halls * * * point up the importance of limiting initial competence to adjudicate such matters to a single expert federal agency." *Plumbers' Union* v. *Borden*, 373 U.S. 690, 695-696.

4. The Board's remedial powers under Section 10(c) of the NLRA, 29 U.S.C. 160(c), enable it to provide effective curative measures for widespread acts of hiring hall discrimination. The Board can order the union and the employer (if it is implicated in the

[24] For example, preference based on residence is lawful because unions have a legitimate interest in protecting work opportunities in the unit they represent. But preference based on the citizenship and residence of the employee's family has been held by the Board to be an invidious and arbitrary classification. *International Longshoremen's Association Local 1581*, 196 NLRB 1186, enforced, 489 F. 2d 635 (C.A. 5), certiorari denied, 419 U.S. 1040. Similarly, the Board has held that a union may legitimately refuse referral to a person who maintains a contracting establishment in the same field. "Such a requirement appears reasonable as an effort to assure that the employment opportunities for those who, day in and day out, are rank-and-file employees, are not prejudiced by competition from those who have operated, and intend in the immediate future to operate, as contracting employers." *Lower Ohio Valley District Council of Carpenters, Millwrights, Local 1080*, 201 NLRB 882, 883. However, a union may not deny an employee referral because she has transgressed the union membership requirement not to work for a non-union employer. *Waitresses' Union No. 276*, 186 NLRB 484.

unlawful discrimination) to make whole any employee discriminated against by paying lost wages with interest.[25] It can order the discriminatees reinstated to their rightful preference in the hiring hall classification scheme.[26]

The Board can also issue a "broad" cease and desist order that runs not only against the union's treatment of the employees immediately involved, but also against similar conduct involving any other employee or employer,[27] and it can monitor the union's adherence to its orders by requiring the keeping and inspection of adequate records to disclose the basis on which employees are referred out of the hiring hall.[28] Finally, failure to abide by court-enforced Board orders is punishable by civil and criminal contempt.[29]

[25] See, *e.g.*, *Carpenters Union Local 180*, 175 NLRB 927; *Asbestos Workers, Local 53 (McCarty & Armstrong)*, 185 NLRB 642; *Williams Press, Inc.*, 195 NLRB No. 905. And see *Local 370, Operating Engineers*, 224 NLRB No. 94, 92 LRRM 1568 (hiring hall discriminatee compensated for estimated loss of call-back dispatches he would have received but for discrimination, as well as for losses directly attributed thereto).

[26] See, *e.g.*, *National Labor Relations Board* v. *Operating Engineers Local 542*, 485 F. 2d 387, 391, 393 (C.A. 3).

[27] See, *e.g.*, *National Labor Relations Board* v. *Local 542, Operating Engineers*, 329 F. 2d 512, 515-516 (C.A. 3).

[28] See, *e.g.*, *Castleman & Bates, Inc.*, 200 NLRB 477, enforced *sub nom. National Labor Relations Board* v. *Local 17, Sheet Metal Workers*, 87 LRRM 3274 (C.A. 1); *Local 138, Operating Engineers* v. *National Labor Relations Board*, 321 F. 2d 130, 138 (C.A. 2).

[29] For example, in *National Labor Relations Board* v. *Ironworkers, Local 86*, 79 LRRM 2723, the Ninth Circuit, in a civil contempt proceeding, established a detailed hiring hall procedure that the union was required to follow, specifying the criteria for preference, the times the hall must be open for registration, and the referral procedure. The decree required the union to maintain

D. The Union Action Complained Of Was Either Prohibited By Section 8, Or Protected By Section 7, Of The NLRA; Under The *Garmon* Doctrine, State Regulation Was Thus Foreclosed

1. If, as Hill alleged, the Union refused to refer him for employment, or referred him to undesirable jobs, because he had opposed the union leadership, such discriminatory use of the hiring hall would clearly have constituted an unfair labor practice under Sections 8(b)(2) and 8(b)(1)(A) of the NLRA.[30] Indeed, on the charge that Hill filed with the Board covering one incident of such discrimination, the Board found a violation of those provisions and ordered that Hill be compensated for lost wages.[31]

sufficient records to monitor the operation of the hall. Moreover, the court appointed the president of a local bar association as "Investigating Referee" with authority to resolve complaints concerning operation of the hall and, subject to the approval of the Board's Regional Director, to recommend changes in its operation. *Id.* at 2725-2726. Failure to comply with the decree would result in a $5,000 fine for each unlawful occurrence, and a $500 per day penalty so long as the unlawful activity continued. *Id.* at 2724.

[30] See, *e.g.*, *United Industrial Workers of North America (Sea Land Service, Inc.)*, 207 NLRB 958; *Operating Engineers, Local 18*, 205 NLRB 901, enforced, 500 F. 2d 48 (C.A. 6); *National Maritime Union*, 177 NLRB 615, enforced, 423 F. 2d 625 (C.A. 2); *United Brotherhood of Carpenters, Local 1281*, 152 NLRB 629, enforced, 369 F. 2d 684 (C.A. 9).

[31] As the court below stated (Pet. App. A23):

> In the case at bar we are not required to speculate whether or not the wrongs which Hill complains of were "arguably" within the jurisdiction of the N.L.R.B. Here the N.L.R.B. did in fact assume jurisdiction, it did find that Local 25 was guilty of unfair labor practices in making work assignments of Hill in the Dinwiddy-Simpson job for the construction of the "Crocker Citizens Bank" building and awarded Hill $2,517 back wages for discriminating conduct with reference to that job. Hill filed other charges of unfair labor practices with the N.L.R.B. but voluntarily withdrew them.
>
> We presume that the N.L.R.B. would have correctly decided the additional matters and would have granted the relief, if any, to which Hill was legally entitled if Hill had pursued the matter further before the N.L.R.B. But Hill was apparently dissatisfied with the award of $2,517 from the N.L.R.B. and sought the more generous bounties of a common law jury.

On the other hand, contrary to petitioner's suggestion (Br. 41), the Union never conceded that its conduct was not protected by the Act, nor does the record establish that the Union's conduct "indisputably proceeded from a desire to inflict retribution upon Petitioner for his political opposition to Daley" (Br. 49). The Union vigorously contended that it administered the hiring hall in a non-discriminatory manner; it attempted to show that Hill's failure to obtain work resulted from his refusal to accept legitimate referrals and his failure to abide by valid hiring hall regulations (see *supra*, p. 5). If the Board were to find that, apart from the refusal to refer Hill to the Dinwiddy-Simpson job (n. 31, *supra*), the Union's assertions were valid, its administration of the hiring hall, in major part, would be sanctioned by the Act.[32]

[32] A union may lawfully seek the discharge of employees who have been hired in contravention of a valid hiring hall agreement. See *e.g.*, *Hod Carriers & Construction Laborers' Union Local 300*, 145 NLRB 1674, 1678, enforced, 392 F. 2d 581 (C.A. 9); *Boston Cement Masons & Asphalt Layers Union No. 534 (Duron Maquire Eastern Corp.)*, 216 NLRB No. 90, 88 LRRM 1348; *Local 673, Laborers International Union*, 171 NLRB 894, 899. And it may properly refuse to refer applicants who do not meet valid hiring criteria. See, *e.g.*, *Local 825, Operating Engineers*, 187 NLRB 50; *Pacific Maritime Association*, 155 NLRB 1231, 1234-1235; *Pacific Maritime Association*, 172 NLRB 2055, 2055-2056; *Int'l Association of Iron Workers, Local 229*, 183 NLRB 271. There are many valid hiring criteria that might justify referring some applicants

2. Nor is the conduct complained of any less an unfair labor practice because it "was not a single act but rather embraced a series of acts of varying character occurring over a period of more than two years" (Pet. Br. 39), or because it was not limited to "a job already possessed by the employee" but involved a "[c]ontinuing refusal to dispatch Petitioner from the hiring hall" (Br. 71). Sections 8(b)(2) and 8(b)(1)(A) of the NLRA are not limited to single incidents of actual discrimination, but also proscribe a course of discrimination [33] as well as threats of discrimination.[34]

Indeed, many unfair labor practice cases adjudicated by the Board have involved situations similar to those alleged by Hill—*i.e.*, a continuing pattern of union job discrimination against an employee-member because of his disfavor with the union leadership [35]—and some reflect a sharp contrast between the approach of the Board and that of the trial court in the present

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for employment in preference to others. For example, applicants for referral may be ranked on the basis of seniority *(Local 928, ILA (Marine Terminals)*, 186 NLRB 1044, 1046); residence *(Everett Construction Co.*, 186 NLRB 240; *Metropolitan District Council, Carpenters*, 194 NLRB 159, n. 2; cf. *Rondicken, Inc.*, 198 NLRB 100, 102-103); or skill or experience *(Local Union No. 40, Sheet Metal Workers*, 199 NLRB 1058, 1062-1063; *Walter J. Barnes Electrical Co.*, 188 NLRB 183, 184; cf. *Ashley, Hickham-Uhr Co.*, 210 NLRB 32).

[33] See, *e.g.*, *Operating Engineers, Local 406*, 189 NLRB 255, 258-264; *Int'l Ass'n of Bridge, etc., Workers, Local 350*, 164 NLRB 644, 645-650; *Local 1486, Brotherhood of Painters*, 132 NLRB 803, 818-826.

[34] See, *e.g.*, *Master Stevedores Association of Texas*, 156 NLRB 1032, 1036-1037; *Plumbers Union No. 137*, 207 NLRB 359, 367; *Heavy Construction Laborer's Local 663 (Treuner Construction Co.)*, 205 NLRB 455, 459, and cases cited therein at n. 27.

[35] See the cases marked with a single asterisk in the appendix to this brief, *infra*, pp. 51-61.

case in assessing the legality of the union's conduct.

In *Laborers, Int'l Union, Local 207*, 206 NLRB 902, for example, the Board was called on to decide whether a union's refusal to refer an employee to various jobs was due to his "clashes over the [operation of] the referral system" (*id.* at 904) or to a non-discriminatory referral priority enjoyed by other employees. In finding that it was due to the former, and therefore that the union was guilty of an unfair labor practice, the Board considered the evidence of union animus against the individual and reviewed the referral system's operation and the union's explanation of its operation (*id.* at 905). In *Operating Engineers, Local 406*, 189 NLRB 255, 257-265, the Board's finding that union dissidents were impermissibly disfavored rested on its assessment of the operation of a complicated referral system in the face of allegations concerning at least 32 specific instances of refusals to refer. *Id.* at 259. In *Operating Engineers, Local 18*, 205 NLRB 901, the Board found a violation of the Act where the incumbent union leadership waged a campaign "to starve out * * * the dissidents" (*id.* at 911, 913) by threatening physical and economic retaliation and by discriminatorily dropping a dissident to the bottom of the referral list on grounds that he refused proffered employment, when in fact the dissident-applicant had valid medical grounds for so refusing. *Id.* at 911. And, in *Carpenters District Council of New Orleans*, 182 NLRB 49, after an exhaustive review of the pertinent hiring practices, the Board concluded that three dissidents "were denied referrals * * * not because they had been lax in making a timely bid for that work, but because [the union] sought to punish them for pursu-

ing a course in opposition to the intraunion political ambitions of the incumbent officers." *Id.* at 56.[36]

On the other hand, in *Plumbers Local 454,* 176 NLRB 896, the Board rejected the allegations of a union dissident that he had been discriminated against in referrals because of his internal political activity. The Board noted (*id.* at 902): "It may be * * * that [the business agent] in operating the referral system * * * on occasion made referrals that constituted favored treatment of particular members of Local 454. But this is not the issue in the case. The issue is whether the referrals were connected with [his] supposed animus against [the dissident] arising from the latter's alleged union activities and were motivated by [the business agent's] desire to punish [him] because of them." In reaching its decision, the Board resolved issues of credibility against the employee "who appears to have a persecution complex, and to be given to the making of threats of bodily violence and to wild exaggerations, often distort[ing] the truth * * * ." *Id.* at 900.[37]

Similarly, in *Local Union 456, Electrical Workers,*

[36] See also *Local 513, Int'l Operating Engineers,* 199 NLRB 921, 922, 924 (rejecting union's contention that an applicant who had a dispute with the business agent was denied referral because he lacked the requisite experience rather than because of hostility on the part of the agent); *Local 1098, Carpenters,* 186 NLRB 385, 389-390 (finding discrimination against dissidents despite union's defense that the employer's request for the particular employees was not in accord with the contractual preferential hiring system).

[37] Here, the trial court instructed the jury that Hill merely had to prove that the defendants had "intentionally and by outrageous conduct" inflicted "severe emotional distress"; the court defined "severe emotional distress" as "any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worr[y]" (*supra,* p. 6).

183 NLRB 1277, the Board, rejecting a claim of discrimination, found that the union was legitimately referring lower listed applicants because they were requested by name by particular employers. The Board stated that "the foregoing general pattern of skipping over applicants militates against [the theory] * * * that [the union] singled out [the dissident] for disparate treatment in the matter of referrals because of his long-standing feud with [the union's] sister local or because of the charge filed by him against [the union] * * *." *Id.* at 1279.[38]

3. All the considerations that underlie the *Garmon* doctrine are therefore applicable here. The subject matter—the use of union hiring halls to effect job discrimination based on improper union considerations—is one that Congress dealt with directly and comprehensively in the NLRA. State regulation could result not only in conflicting remedies for conduct that may be clearly unlawful, but also in inconsistent rulings concerning the propriety of conduct only arguably unlawful.

The danger of conflicting judgments concerning the lawfulness of the union conduct in this case—and the need in this field for evaluation of the facts by an experienced, expert tribunal in order to achieve a reasonably consistent course of adjudication—is intensified by the difficulty and complexity of the issues to be resolved. Moreover, the state court here applied, not NLRA substantive principles, but state tort law, under

[38] Here, too, the evidence focused primarily on widespread favoritism in referrals rather than on discrimination specifically directed at Hill (*supra,* p. 4).

which the jury was given broad discretion to make a subjective judgment whether the Union's conduct was "outrageous" (see p. 6, *supra*). As the court below pointed out (Pet. App. A25):

> The very purpose of having one uniform national policy administered by a single specially constituted tribunal would be completely frustrated and defeated if it were legally permissible for juries in the fifty different state tribunals to award different amounts of damage for conduct which is essentially within the jurisdiction of the N.L.R.B. A labor union could be completely wiped out financially by such awards resulting in substantial detriment to other innocent union members whose livelihood depends upon continued union representation. * * *

The threat of such jury verdicts could chill unions in the exercise of rights protected by the NLRA. The Act gives a union the right to operate a hiring system under which applicants for employment are referred on the basis of objective criteria unrelated to "union considerations" (see *supra,* pp. 23-24). Although a union is not permitted under such a system to discriminate against an employee because he is a dissident, neither is it required to give preference to an employee because he is a dissident. Yet, if the union's reasons for failing to refer a dissident were subject to review, not only by the National Labor Relations Board, but also by state courts and juries, the union could not depend upon definitive Board adjudication of the controversy. Cf. *Beasley* v. *Food Fair of North Carolina, Inc.,* 416 U.S. 653. Faced with the risk of substantial state court

damage judgments, the union might well be prompted to "play it safe" by referring for employment dissidents who, for valid reasons, would not otherwise have been referred.[39] Cf. *Letter Carriers* v. *Austin,* 418 U.S. 264, 277.

Finally, the Board's decisions reflect instances in which employers not only have discriminated against employees because of their union activity, but also have engaged in other conduct against them—*e.g.,* surveillance, harassment, humiliation—that could reasonably be viewed as "outrageous" and be found to have caused emotional or physical distress.[40] If state courts were

[39] This would prejudice other employees who were ahead of the dissidents under the normal referral criteria, and could, in turn, subject the union to suits by those employees.

[40] See, *e.g., Zinke's Foods, Inc.,* 185 NLRB 901, 905-907, enforced, 463 F. 2d 316 (C.A.D.C.) (employee union adherent forced to quit when employer's harassment made him ill); *Retail Store Employees Union Local 880* v. *National Labor Relations Board,* 419 F. 2d 329, 332 (C.A.D.C.) (employee union activist made ill and forced to quit by "humiliating and onerous conditions imposed" on her in her job as part of employer's "continuing effort to undercut the Union"); *Holly Bra of California,* 164 NLRB 1112, 1121, enforced, 405 F. 2d 870 (C.A. 9) (employer's program of "discriminatory harassment of [union activist employee], consisting of baseless faultfinding, requirement of unnecessary 'repairs' * * * and humiliating 'piece by piece' inspection of her work," resulted "in emotional upset for her, leading her to absent herself for that reason for about a month" and causing her to become " 'sick from my nerves' "); *Lipman Bros., Inc.,* 147 NLRB 1342, 1344-1345, 1361 (employee with heart condition forced to do heavy work); *National Labor Relations Board* v. *Ritchie Mfg. Co.,* 354 F. 2d 90, 98 (C.A. 8) (employer attempted "to hasten the departure of [union activist] as an employee" "through systematically placing him for an indefinite period on a job known to cause him illness"); *Saxe-Glassman Shoe Corp.,* 97 NLRB 332, 333-334, 349-351, enforced, 201 F. 2d 238, 243 (C.A. 1) (constant interrogation of union activist caused her mental distress which, in turn, prompted her to quit); *Beiser Aviation Corp.,* 135 NLRB 450, 451 (employer intentionally made employee "object of ridicule and

held to have jurisdiction over suits against unions to recover damages for this kind of injury, even when it is directly related to conduct regulated by the NLRA, state courts arguably would have jurisdiction over similar suits against employers. If Section 8(b)(2) unfair labor practice charges against a union could be retried in a state court whenever verbal abuse or similar "outrageous" conduct is enmeshed with employment discrimination caused by the union, then Section 8(a)(3) unfair labor practice charges against an employer might well similarly be subject to state court retrial when such conduct is enmeshed with discrimination caused by the employer—thus further undermining the *Garmon* principle.

E. The Recognized Exceptions To *Garmon* Are Not Applicable Here

1. Petitioner contends (Br. 56-63) that the instant suit is analogous to *Linn* v. *Plant Guard Workers,* 383 U.S. 53, and *Automobile Workers* v. *Russell,* 356 U.S. 634, in which the Court found exceptions to the *Garmon*

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harassment" by fellow employees, in reprisal for union activities); *Becton-Dickinson Co.,* 189 NLRB 787, 787-789, 794-795 (pro-union employees forced to quit because of harassment by anti-union employees which caused emotional distress and physical illness; employer acquiesced in such practices as putting dead mice in a pro-union employee's coat pockets and sending him "derogatory and obscene notes"; employer also transferred another pro-union employee to jobs employer knew he was physically unable to do); *Dodson IGA Foodliner,* 194 NLRB 192, 193 (pro-union employee came down with " 'bad case of the shingles' " causing her to quit, due to employer's exaggerated surveillance of her work, threats, and harassment during a union organizational campaign).

preemption doctrine. *Linn* sustained the power of a state court to award damages for malicious defamation occurring in a labor dispute; *Russell* sustained its power to award damages for violence occurring in a labor dispute.

While the opinions in those cases noted that the conduct involved would constitute a common law tort even if it did not occur in a labor dispute context and that, to the extent that the Board could provide a remedy, it was not as full as a court could provide (see 356 U.S. at 642-646; 383 U.S. at 61-64), this Court's subsequent opinion in *Lockridge, supra,* makes plain that these factors were not the reason for excepting those cases from the *Garmon* doctrine. Rather, the exception rested on the ground that, "in spite of the force of the policies *Garmon* seeks to promote," the Court could not conscientiously presume "that Congress meant to intrude so deeply into areas traditionally left to local law." *Lockridge, supra,* 403 U.S. at 297. See also *Lodge 76, Machinists* v. *Wisconsin Employment Relations Commission, supra,* slip op. 4-5, and notes 2 and 3, explaining *Russell* and *Linn* on similar grounds.

Moreover, the Court in *Linn* drew a distinction between a defamatory statement "issued with knowledge of its falsity, or with reckless disregard of whether it was true or false" (383 U.S. at 61), and one lacking this degree of malice. It found that the exercise of state jurisdiction over the former "would be a 'merely peripheral concern of the Labor Management Relations Act' " (*ibid.*), but that the exercise of such jurisdiction over the latter would create a danger of inhibiting the robust and wide open debate that the Act

encourages (*id.* at 62). Accordingly, it confined the power of the state to redress defamation occurring in a labor dispute to the former class of statements.[41] Cf. *New York Times Co.* v. *Sullivan*, 376 U.S. 254.

The tort of intentional infliction of emotional distress by outrageous conduct (Pet. Br. 58) is a relatively new cause of action whose roots in state law are not as deep as are those of torts based on violence or defamation. See Prosser, *Law of Torts* 49-50, 56 (4th ed.). Moreover, when, as in this case, the allegedly outrageous conduct sought to be redressed is directly related to allegations of employment discrimination that the Act pervasively regulates, a state remedy for the former is not "peripheral" to, but imperils, the federal regulatory scheme.

The potential for impairing the federal regulatory scheme is not lessened by the fact that the state would be applying general tort law rather than labor law and would be providing a remedy—damages for emotional and physical distress—that the Board could not provide. As the Court stated in *Garmon, supra*, 359 U.S. at 244:

[41] In *Linn*, the Court also recognized that, "in view of the propensity of juries to award excessive damages for defamation, the availability of libel actions may pose a threat to the stability of labor unions and smaller employers." 383 U.S. at 64. Accordingly, it further held that "the amount of damages which may be recovered depends upon evidence as to the severity of the resulting harm. * * * [A] complainant may not recover except upon proof of such harm. * * * If the amount of damages awarded is excessive, it is the duty of the trial judge to require a remittitur or a new trial. Likewise, the defamed party must establish that he has suffered some sort of compensable harm as a prerequisite to the recovery of additional punitive damages." *Id.* at 65-66.

> Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed towards the governance of industrial relations [footnote omitted]. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes.[42]

The Court added (*id.* at 246-247):

> Nor is it significant that California asserted its power to give damages rather than to enjoin what the Board may restrain though it could not compensate. * * * [Since] remedies form an ingredient of any integrated scheme of regulation, to allow the State to grant a remedy here which has been withheld from the National Labor Relations Board only accentuates the danger of conflict.

2. On no firmer footing is petitioner's attempt (Br. 63-83) to fit this case within the other exception for matters of only "peripheral concern" to the NLRA. In *Machinists* v. *Gonzales*, 356 U.S. 617, this Court sustained the power of a state court to entertain a suit by a union member claiming he had been expelled from the union in violation of rights conferred by the union's constitution and bylaws and to order, as well as his reinstatement in the union, damages for wages lost due to

[42] On at least three other occasions, the Court has likewise concluded that, where a state seeks to regulate conduct central to the NLRA's concern, it is irrelevant that it may be applying law not directly related to the regulation of labor relations. See *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, 479-481; *Plumbers' Union* v. *Borden*, 373 U.S. 690, 698; *Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, 292.

the revocation of membership. However, *Gonzales* was distinguished in *Plumbers' Union* v. *Borden,* 373 U.S. 690, and *Iron Workers Union* v. *Perko,* 373 U.S. 701, and that distinction, which was adhered to in *Lockridge, supra,* is apposite here.

In *Borden,* a union member was refused a job referral by the union because he had sought work directly instead of through the union hiring hall. He brought a state court suit against the union claiming, *inter alia,* that it "had breached a promise, implicit in the membership arrangement, not to discriminate unfairly or to deny any member the right to work." 373 U.S. at 692. The jury awarded, in addition to actual loss of earnings ($1,916), compensation for mental suffering ($1,500) and punitive damages ($5,000). The trial court disallowed recovery for mental anguish and reduced the punitive damages to the amount of the actual damages, thus awarding total damages of $3,832. *Id.* at 693. This Court found that, if it were assumed that the union's "refusal and the resulting inability to obtain employment were in some way based on [Borden's] actual or believed failure to comply with internal union rules," it was "certainly 'arguable' " that the union's conduct violated Sections 8(b)(1)(A) and 8(b)(2) of the NLRA. On the other hand, "the Board might have found that the union conduct in question was not an unfair labor practice but rather was protected concerted activity within the meaning of § 7," because "the refusal to refer was due only to [Borden's] efforts to circumvent a lawful hiring-hall arrangement * * *." *Id.* at 694-695 (emphasis omitted). Thus, unlike the suit in *Gonzales*—which "was focused on purely internal union matters, *i.e.,* on relations between the individual plaintiff and the union not having to do directly with matters of employment, and [where] the principal relief sought was restoration of union membership rights"—the "'crux' of the action [in *Borden*] concerned Borden's employment relations and involved conduct arguably subject to the Board's jurisdiction." *Id.* at 697. Accordingly, the Court held that the state court suit was barred under *Garmon.*

Similarly, the Court held in *Perko* that *Garmon* barred a state court suit that had been brought by a union member claiming that the union had wrongfully deprived him of his right to continue working as a foreman and had thereby caused his discharge. 373 U.S. at 702-704. The Court found that, "[a]s in *Borden,* the crux of the action here concerned alleged interference with the plaintiff's existing or prospective employment relations and was not directed to internal union matters." *Id.* at 705. Accordingly, it set aside an award of $25,000 damages for past and future loss of earnings. *Id.* at 704.

Finally, in *Lockridge,* the Court held that *Garmon* barred a state court suit by an employee alleging that the union had wrongfully declared him delinquent in his union dues obligation and then caused his discharge under the union security agreement with the employer (see n. 8, *supra*). In so holding, the Court again emphasized that *Gonzales* "'was focused on purely internal union matters,' * * * a subject the National Labor Relations Act leaves principally to other processes of law." 403 U.S. at 296. The Court added (*ibid.*):

> To assess the legality of his union's conduct toward Gonzales the California courts needed only to focus upon the union's constitution and by-laws. Here, however, Lockridge's entire case turned upon the construction of the applicable union security clause, a matter as to which * * * federal concern is pervasive and its regulation complex. The reasons for Gonzales' deprivation of union membership had nothing to do with matters of employment, while Lockridge's cause of action and claim for damages was based solely upon the procurement of his discharge from employment.

As the court below correctly found (*supra,* pp. 7-8), the instant case is like *Borden, Perko,* and *Lockridge,* and not like *Gonzales,* for the crux of Hill's complaint is job discrimination and not internal union affairs. Petitioner's arguments to the contrary do not withstand analysis.

First, petitioner asserts that "the conduct in *Borden, Perko* and *Lockridge* raised issues which might be regarded as particularly within the expertise of the Labor Board and there existed * * * a risk of inconsistency between judicial resolution of the issues and the Board's resolution" (Br. 69). On the other hand, according to petitioner, this case, like *Gonzales,* involves activity which, "to the extent [it was] not clearly outside the Act, * * * was either clearly prohibited * * * or arguably prohibited * * * [but] not by any stretch of the imagination protected" (Br. 70). As we have already shown (*supra,* pp. 16-24, 28-29), however, the latter assertion misconceives both the scope of the Act and the gravamen of the instant action.

Second, petitioner contends that "the interference with existing or prospective employment relations in *Borden, Perko* and *Lockridge* was far more direct and immediate than in either *Gonzales* or this case" (Br. 71). This contention, too, rests on a premise that we have shown to be invalid (*supra,* pp. 30-33)—*i.e.,* that Congress was concerned in the NLRA with single acts of job discrimination but not with a continuing course of such discrimination.

Third, petitioner contends that "in *Borden, Perko* and *Lockridge* the damages awarded were for lost earnings alone, a form of relief the Board could have given, while in *Gonzales* the damages award * * * included as well a sum for mental suffering, which was clearly beyond the Board's power" (Br. 72). Here, petitioner says, the "compensatory damages awarded * * * included no sum for lost earnings and consisted entirely of damages for severe emotional distress, which could not have been obtained from the Board" (*ibid.*). However, in *Borden, Perko,* and *Lockridge,* the relief granted by the state court was not limited to relief that the Board could have awarded.[43] Moreover, as shown above (pp. 15, 39), the fact that the complaint here sought damages that the Board cannot provide—with respect to conduct that is central, and not merely pe-

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[43] In *Borden,* the court awarded punitive damages in addition to damages for actual loss of earnings. In *Perko,* it awarded damages for prospective, as well as actual, loss of earnings. (*Supra,* pp. 40-41.) In *Lockridge,* the trial court awarded the employee $32,678.56 as compensation for wages actually lost and also restored him to membership in the union, although he never sought such a remedy. On appeal, the State Supreme Court affirmed but also ordered restoration of the employee's seniority rights. 403 U.S. at 282.

ripheral, to the concerns of the NLRA—heightens, rather than lessens, the need for precluding such relief.

3. Finally, contrary to petitioner's contention (Br. 84-111), a finding of preemption here is not undermined by the fact that the courts are empowered to adjudicate union-member disputes under Title I of the Labor Management Reporting and Disclosure Act of 1959 (see, *e.g.*, 29 U.S.C. 413), to entertain suits alleging breach of the duty of fair representation, and to determine, under Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. 185, questions of breach of the collective bargaining agreement, even if the conduct involved may also constitute an unfair labor practice under the NLRA. "Unlike the problem here under review, Congress did not put enforcement of the Labor-Management Reporting and Disclosure Act of 1959 into the hands of the Board. * * * And it affirmatively expressed an intention that the Board not possess preemptive jurisdiction over suits to enforce collective bargaining agreements." *Lockridge, supra,* 403 U.S. at 289, n. 5. In actions alleging breach of the duty of fair representation, the rule of law applied "is so structured and administered that * * * it is safe to presume that judicial supervision will not disserve the interests promoted by the federal labor statutes * * *." *Id.* at 297. See also *Vaca* v. *Sipes,* 386 U.S. 171, 181-182."

" The trial court here sustained a demurrer to the two counts of the complaint whose terms arguably could be viewed as encompassing a claim that the collective bargaining agreement or the duty of fair representation was breached (see counts 3 and 4 set out in n. 2, *supra*). Petitioner nonetheless contends that the surviving cause of action (count 2) may "suffice to state a claim * * * for breach by a union of its duty of fair representation, or for a union's imposition of discipline upon a member in violation of the procedural and substantive standards set forth in the Labor Management Reporting and Disclosure Act" (Br. 84). Count 2 alleged in essence that the Union threatened to deny job opportunities to Hill because of his lack of good standing with the Union leadership (a classic form of discrimination proscribed by Section 8(b)(2) of the NLRA), and Hill's proof at the trial was directed to establishing such discrimination. Moreover, the cause of action under count 2 was predicated solely on state tort law; a cause of action under the LMRDA or for breach of the duty of fair representation is based on federal law. That Hill might have been able to allege and prove a cause of action under federal law (see Br. 85) does not help petitioner's position here. A fundamental purpose of the *Garmon* doctrine—to afford the lower courts "a rule capable of relatively easy application" (*supra,* p. 15)—would be defeated if the preemption determination turned on what could have been alleged and proven, instead of what actually was done. Whether the present suit is preempted by the NLRA is determined by what petitioner alleged and actually proved under count 2 of the complaint, the only count that survived demurrer in the trial court.

Moreover, all of these actions are based on federal law, whereas the instant action is based on state law. Allowing different forums to apply and rationalize a body of federal law does not present the same danger of disparate substantive standards that would result from concurrent application of state and federal law. As the Court stated in *Connell Construction Co.* v. *Plumbers and Steamfitters Local Union No. 100,* 421 U.S. 616, 635-637—which upheld the application of federal antitrust laws to activity also regulated by the NLRA, while refusing to permit the application of state antitrust laws—the federal laws were "carefully tailored" by Congress and the Court in terms of both substance and remedy to avoid conflict with federal labor policy, while the state laws "generally have not been subjected to this process of accommodation." *Id.* at 636.

F. Even If The *Garmon* Doctrine Were Modified So As Not To Apply To "Union-Member Relations," The Present Action Should Still Be Preempted

In *Lockridge, supra,* the dissenting Justices expressed the view that the *Garmon* preemption doctrine should not be applied to "union-member relations," which involve "the affairs between the union and the employee as union member." 403 U.S. at 320 (Mr. Justice White); see also *id.* at 305, 308-309 (Mr. Justice Douglas).[45] They argued that Congress did not intend to deal comprehensively with union-member relations, and that it preserved state remedies for some of the conduct prohibited by federal law. *Id.* at 323 (Mr. Justice White). Moreover, they stated, existing Board remedies are inadequate to provide full relief to those injured in such controversies.

Whatever the merit of relaxing the *Garmon* preemption doctrine with respect to union-member disputes

[45] Mr. Justice White's dissenting opinion also urged that the *Garmon* rule should be revised so that preemption would no longer follow merely from a determination that conduct is "arguably protected under § 7" of the NLRA. With activity that is "arguably prohibited by § 8 the charging party can at least present the General Counsel with the facts, and if the General Counsel issues a complaint, the charging party can present the Board with the facts and arguments to support the claim. But for activity that is arguably protected, there is no provision for an authoritative decision by the Board in the first instance * * *." 403 U.S. at 325-326.

There is no need to resolve that question here, for, as in *Lockridge,* "[t]his is not a situation where the sole argument for preemption is that the union's conduct was arguably protected. Clearly, if the facts are as [petitioner] believes them to be, there is ample reason to conclude that [respondents] probably committed an unfair labor practice." 403 U.S. at 290, n. 6. Indeed, the Board so found on the charge submitted to it for adjudication (see *supra,* p. 5).

generally, the considerations that prompted and support that doctrine warrant its continued application where, as here, the union-member dispute is not "focused on purely internal union matters" but has to do "directly with matters of employment." *Borden, supra,* 373 U.S. at 697.[46]

Employment discrimination based on considerations of union membership or compliance with union policies, and the use of union hiring halls to effect such discrimination, are matters with which Congress dealt directly and comprehensively in the NLRA (see *supra,* pp. 19-23). Congress did not intend to outlaw hiring halls as such or to foreclose the use of referral preferences based on legitimate objective criteria (see *supra,* pp. 23-24). To permit a state court to "regulate conduct so plainly within the central aim of federal regulation" (*Garmon, supra,* 359 U.S. at 244) presents a real danger of the

[46] Although Professor Cox contends that the *Garmon* preemption doctrine should not be applied to preclude the courts from awarding damages "for loss of employment following wrongful expulsion from membership" (and he views *Lockridge,* no less than *Gonzales,* as falling in this category), Cox, *Labor Law Preemption Revisited,* 85 Harv. L. Rev. 1337, 1374, 1375 (1972), he adds that this would not undermine cases like *Borden* and *Perko:*

> In these cases the employee was complaining only of the deprivation of a job; no union expulsion had occurred. The NLRB could deal with the whole controversy just as in any other case of discrimination encouraging or discouraging union membership. * * * In addition, a line drawn between claims of wrongful interference with employment and wrongful expulsion lends itself to relative ease and uniformity of administration. [*Id.* at 1376, n. 174.]

As shown (*supra,* pp. 40-43), the present case is like *Borden* and *Perko.*

very conflicts that the preemption doctrine was designed to avoid.[47]

In sum, the Court adopted the *Garmon* approach for determining whether activity was preempted by the NLRA because "experience—not pure logic— * * * taught" that each of the alternative approaches "sacrificed important federal interests in a uniform law of labor relations centrally administered by an expert agency without yielding anything in return by way of predictability or ease of judicial application." *Lockridge, supra,* 403 U.S. at 291. In *Lockridge,* the Court recently reexamined the *Garmon* doctrine, and, still finding no better alternative, decided to adhere to it. See also *Lodge 76, supra,* slip op. 6-7. Nothing has occurred that would warrant a change at this time—especially in light of the fact that the *Garmon* preemption doctrine is a matter of statutory, not constitutional,

[47] Petitioner urges the adoption of a new preemption formula based on *Teamsters Local 20* v. *Morton,* 377 U.S. 252, which would permit state jurisdiction when the activity is not actually protected by the NLRA and the state law applied is not based "upon an accommodation of the special interests of employers, unions, employees and the public in the process of employee self-organization and collective bargaining" (Br. 121). A formula of that sort might have validity when the activity is either protected by Section 7 of the NLRA or unregulated by the Act, for there would be no easy means of obtaining a Board determination of the Section 7 question (see n. 45, *supra*). Here, however, the Union's conduct was either prohibited by Section 8 or protected by Section 7, and Hill could readily have obtained a Board determination by simply filing an unfair labor practice charge (as he did with respect to one incident).

interpretation, which Congress is free to overrule or modify by amending the NLRA.[48] As shown above, the *Garmon* doctrine leads to a finding of preemption here.[49]

[48] It is, accordingly, significant that, although the decisions of this Court giving the NLRA broad preemptive effect were well known at the time of the 1959 Landrum-Griffin (73 Stat. 519), and the 1974 Hospital (88 Stat. 397), amendments to the Act, Congress has altered the preemption doctrine in only one respect. See Section 14(c)(2) of the NLRA, 29 U.S.C. 164(c)(2), added in 1959, which overruled the holding in *Guss* v. *Utah Board,* 353 U.S. 1, that state regulation was precluded even where the National Labor Relations Board would not exercise its jurisdiction over the labor dispute involved. Cf. H.R. 3, 86th Cong., 1st Sess., which would have precluded giving preemptive effect to Acts of Congress unless the Acts expressly so provided or state law was in direct conflict; the bill passed the House (105 Cong. Rec. 11808) but lapsed in the Senate. See 105 Cong. Rec. 11648, 11655 (House debate) and 105 Cong. Rec. 235 (remarks of Senator McClellan) (indicating congressional awareness of this Court's preemption decisions under the NLRA).

[49] Indeed, the activity involved in the instant case furnishes a stronger basis for preemption than the activity involved in *Lockridge.* In *Lockridge,* the state court was called upon to interpret a union's constitution in order to assess the lawfulness of the union's treatment of an employee-member. Although that exercise of state court jurisdiction was preempted because the discrimination involved the employment relationship, interpretation of a union's constitution is within a state court's institutional capacity. Here, by contrast, the state court and jury were asked to judge the lawfulness of the operation of the union's hiring hall, a task which, as shown, *supra,* pp. 19-26, Congress has committed to the Board's expertise.

CONCLUSION

The judgment of the California Court of Appeal should be affirmed.

Respectfully submitted.

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APPENDIX

The cases listed below involve complaints of violations of the National Labor Relations Act in connection with union control over hiring or employment practices. Cases preceded by an asterisk involve allegations of discrimination in retaliation for dissident union activity or because of hostility on the part of union officials. Cases preceded by double asterisks involve allegations of more than a single instance of discrimination.

Boilermakers and its Local 92 (American Pipe and Steel Co.), 93 NLRB 54.

Chain Service Restaurant Employees Local 42 (Childs Co.), 93 NLRB 281, enforced as modified, 195 F. 2d 617 (C.A. 2).

Retail Clerks Local 770 (Hollywood Ranch Market), 93 NLRB 1147.

Boilermakers Local 6 (Consolidated Western Steel Corp.), 94 NLRB 1590.

Longshoremen's Association Local 1291 (Jarka Corp.), 94 NLRB 320, enforced as modified, 198 F. 2d 618 (C.A. 3).

**Longshoremen's and Warehousemen's Union and its Local 10 (Pacific Maritime Association)*, 94 NLRB 1091, enforced, 210 F. 2d 581 (C.A. 9).

Carpenters Local 1498 and 184 (Utah Construction Co.), 95 NLRB 196.

Operating Engineers Local 57 (Gamino Construction Co.), 97 NLRB 386, enforced, 201 F. 2d 771 (C.A. 1).

American Radio Association (Alaska Steamship Co.), 98 NLRB 22, enforced as modified, 211 F. 2d 357 (C.A. 9).

Longshoremen's and Warehousemen's Union and its Local 19 (Waterfront Employers of Washington), 98 NLRB 284, enforced, 211 F. 2d 946 (C.A. 9).

**Marine Cooks and Stewards (Pacific American Ship-Owners Assoc.)*, 98 NLRB 582.

Teamsters Local 621 (Sesco Contractors), 98 NLRB 824.

Newspaper and Mail Deliverers' Union (New York Times Co.), 101 NLRB 589.

Operative Plasterers Local 867 (Morrison-Knudson Co.), 101 NLRB 123.

Heat and Frost Insulators Local 28 (Construction Specialties Co.), 102 NLRB 1542, enforced, 208 F. 2d 170 (C.A. 10).

Longshoremen's and Warehousemen's Union Local 10 (Pacific Maritime Association), 102 NLRB 907, enforced, 214 F.2d 778 (C.A. 9).

**Longshoremen's Association, District Councils and Locals (Puerto Rico S.S. Assoc.)*, 103 NLRB 1217, enforced, 211 F. 2d 274 (C.A. 1).

Operative Plasterers' Local 797 (Haddock Engineers Ltd.), 104 NLRB 994, enforced as modified, 215 F. 2d 734 (C.A. 9).

Boilermakers Local 13 (Babcock and Wilcox Co.), 105 NLRB 339.

**Boilermakers and its District Lodge 57, Locals 363, 679 (Ebasco Services, Inc.)*, 107 NLRB 617.

Pacific Coast Marine Firemen, 107 NLRB 593.

Carpenters Local 472 and Machinists Union (McGraw Construction Co.), 107 NLRB 1043.

Iron Workers Local 595 (Bechtel Corp.), 108 NLRB 1070, enforced, 218 F. 2d 958 (C.A. 6).

Machinists Association, et al. (Seabright Construction Co.), 108 NLRB 8.

Carpenters Local 1281 (J. C. Boespflug Co.), 109 NLRB 874.

Carpenters Mohawk District Council, et al. (Grow Construction Co.), 109 NLRB 522, enforced, 222 F. 2d 542 (C.A. 2).

Electrical Workers Local 1533 (Golden Valley Electric Association, Inc.), 109 NLRB 397.

Iron Workers Local 595 (R. Clinton Construction Co.), 109 NLRB 73.

Carpenters Local 1423 (Columbus Showcase Co.), 111 NLRB 206, enforced, 238 F. 2d 832 (C.A. 5).

Carpenters Local 1028 (Dennehy Construction Co.), 111 NLRB 1025, enforced, 232 F. 2d 454 (C.A. 10).

Electrical Workers Local 948 (Hall Electric Co.), 111 NLRB 68.

**Hod Carriers' Local 264 (Jones-Hettelsater Construction Co.)*, 112 NLRB 1482.

Operating Engineers Local 12 (AGC, Southern Calif. Chapter), 113 NLRB 655, enforced as modified, 237 F. 2d 670 (C.A. 9).

Hod Carriers Local 369 (Frommeyer and Co.), 114 NLRB 872, enforced as modified, 240 F. 2d 539 (C.A. 3).

**Iron Workers Local 36 (H. E. Stoudt and Son, Inc.)*, 114 NLRB 838.

Millwright Local 2484 (W.S. Bellows Construction Corp.), 114 NLRB 541.

Teamsters Local 148 (Harry Griffin Trucking Co.), 114 NLRB 1494.

Carpenters, its Locals 1400 and 1046, et al. (Pardee Construction Co.), 115 NLRB 126.

Electrical Workers and its Locals 501 and 781 (County Electric Co.), 116 NLRB 1080.

Operating Engineers Locals 18, 18-A, and 18-B (Hatcher Bros., Inc.), 116 NLRB 1145.

Hod Carriers Local 276, et al. (Mountain Pacific, Seattle, and Tacoma Chapters of AGC), 117 NLRB 1319.

Operating Engineers Local 542 (Frommeyer & Co.), 117 NLRB 1863, enforced, 255 F. 2d 703 (C.A. 3).

Meat Cutters Local 88 (A and P), 117 NLRB 1542.

Heat & Frost Insulators and its Local 47 (Alexander-Stafford Corp.), 118 NLRB 79, enforced, 254 F. 2d 955 (C.A.D.C.).

Bricklayers v. Masons Local 24 (Booth & Flinn Co.), 129 NLRB 867.

Local 490, Int'l Hod Carriers, 130 NLRB 380, enforced, 300 F. 2d 328 (C.A. 8).

***Local 1486, Bro. of Painters*, 132 NLRB 803, 818-826.

Pan Atlantic Steamship Co., 132 NLRB 868.

Building Material & Dump Truck Drivers Local 420, 132 NLRB 1044.

Bechtel Corp., 133 NLRB 1185, modified, 328 F. 2d 28 (C.A. 10).

Int'l Ass'n of Bridge etc. Workers, 134 NLRB 301.

Huber, Hunt & Nichols, Inc., 134 NLRB 348.
Laborers & Hod Carriers Local 652, 135 NLRB 43.
Millwrights & Machinery Erectors Local 2471, 135 NLRB 79.
**Local 69, Plumbing & Pipe Fitting Workers*, 136 NLRB 1556.
International Marine Terminals, Inc., 137 NLRB 588.
Daniel O'Connell's Sons, 139 NLRB 51.
J. J. Hagerty, Inc., 139 NLRB 633, modified, 321 F. 2d 130 (C.A. 2).
Local 507, Int'l Hod Carriers etc., 140 NLRB 1090, enforced, 336 F. 2d 460 (C.A. 9).
**Local 18, Int'l Union of Op. Engineers*, 141 NLRB 512.
**Int'l Union of Op. Engineers, Local 624 A-B*, 141 NLRB 615.
**Lummus Co.*, 142 NLRB 517, modified, 339 F. 2d 728 (C.A.D.C.).
Northern Stevedoring & Handling Corp., 143 NLRB 8.
Local 18, Int'l U. of Op. Engineers, 144 NLRB 1365.
Hoisting & Portable Engineers, Local 302, 144 NLRB 1449.
New York Typographical Union No. 6, 144 NLRB 1555, enforced, 336 F. 2d 115 (C.A. 2).
**Plasterers & Cement Masons Local 394*, 145 NLRB 188.
**Int'l Un. of Op. Engineers, Local 18*, 145 NLRB 1492.
**Int'l Ass'n of Heat & Frost Insulators, Local 84*, 146 NLRB 660.
**Int'l Hod Carriers, Building etc., Local 341*, 146 NLRB 1358.
**Int'l Bro. of Teamsters, Local 38*, 146 NLRB 1627.
Hargett Const. Co., 147 NLRB 210.
**Hod Carriers', etc., Local 652*, 147 NLRB 380, enforced, 351 F. 2d 151 (C.A. 9).
Local Un. 337, United Assoc. Plumbing, 147 NLRB 929.
**Local Union No. 181, Int'l U. Op. Engineers*, 148 NLRB 750.
**Local 469, Plumbing Industry etc.*, 149 NLRB 39.
Local 25, Marine Division IUOE, 149 NLRB 519.
Local 542, Int'l U. of Op. Engineers, 151 NLRB 497.
Local 1367, Int'l Longshoremen's Ass'n, 151 NLRB 810.
**Iron Workers Local 433*, 151 NLRB 1092.

**United Bro. of Carpenters, Local 1281 (Raber-Kieff)*, 152 NLRB 629, enforced, 369 F. 2d 684 (C.A. 9).
Local 18, Bricklayers, Masons etc., 152 NLRB 1280.
Skouras Theaters Corp., 155 NLRB 157, enforced, 361 F. 2d 826 (C.A. 3).
Int'l U. of Op. Engineers, Local 98, 155 NLRB 850.
**Int'l Longshoremen's etc. Union, Local 12*, 155 NLRB 1042, enforced, 378 F. 2d 125 (C.A. 9), certiorari denied, 389 U.S. 846.
Pacific Maritime Association, 155 NLRB 1231.
Master Stevedores Association of Texas, 156 NLRB 1032.
Local 742, Carpenters (J. L. Simmons Co.), 157 NLRB 451, enforced, 377 F. 2d 929 (C.A.D.C.).
Local 17, Bridge etc. Workers (A. J. Hoffman Co.), 158 NLRB 47.
Cargo Handlers, Inc., 159 NLRB 321.
Local 38, Plumbers (D. I. Chadbourne, Inc.), 159 NLRB 370, enforced, 388 F. 2d 679 (C.A. 9).
Local 469, Plumbers (S. M. McCulloch), 159 NLRB 1119.
**Millwrights Local 1699 (Swinerton & Walberg Co.)*, 159 NLRB 1337.
Carpenters Local 701 (Haas & Haynie Corp.), 160 NLRB 1612.
Carpenters Local 1849, 161 NLRB 424.
International Hod Carriers, Local 300 (HRH Calif. Inc.), 162 NLRB 289.
Carpenters Local 180 (Golden State Runway), 162 NLRB 950.
**Local 872, Longshoremen's*, 163 NLRB 586.
***Int'l Ass'n of Bridge etc. Wkrs., Local 350*, 164 NLRB 644.
Local 42, Heat & Frost Insulators (Catalytic Const. Co.), 164 NLRB 916.
Reinforced Steel Workers Local 426 (K. G. Marks, Inc.), 164 NLRB 903.
Int'l U. Op. Engineers, Local 12 (Ledford Bros.), 165 NLRB 358, enforced, 413 F. 2d 705 (C.A. 9).
Twin City Roofing, 165 NLRB 151.
**Local 136, Carpenters*, 165 NLRB 1040, reversed, 404 F. 2d 854 (C.A. 6).

Int'l U. of Brewery etc. Workers, 166 NLRB 915.
Local 190, Laborers' Int'l Union, 167 NLRB 561.
Houston Maritime Ass'n Inc., 168 NLRB 615, reversed, 426 F. 2d 584 (C.A. 5).
Local 673 Laborers Int'l Union, 171 NLRB 894.
Pacific Maritime Assoc., 172 NLRB 2055.
Int'l Bro. of Teamsters, Local 222, 173 NLRB 489.
Int'l Longshoremen's Union Local 17 (Assoc. Metals), 173 NLRB 594, enforced, 434 F. 2d 620 (C.A. 9).
Plumbers Local 633, 173 NLRB 1333, enforced, 424 F. 2d 390 (C.A. 6).
J-M Company, Inc., 173 NLRB 1461.
Furnco Construction Corp., 174 NLRB 93.
Huxtable-Hammond Co., 174 NLRB 197.
San Jose Stereotypers' Local 120, 175 NLRB 1066.
Plumbing & Pipefitters Local 389 (Scheurer Engineering), 176 NLRB 402.
Local 383, Lathers Union, 176 NLRB 410.
Plumbers, Local 454, 176 NLRB 896.
National Maritime Union, 177 NLRB 615, enforced, 423 F. 2d 625 (C.A. 2).
System 99 d/b/a Interlines Blankenship Motor Express, 177 NLRB 689, enforced, 432 F. 2d 409 (C.A. 9), certiorari denied, 401 U.S. 1002.
United Ass'n of Plumbers Local 633, 178 NLRB 398, enforced, 436 F. 2d 1386 (C.A. 6).
Int'l Longshoremen's, Local 1838, 179 NLRB 425.
United Bro. of Carpenters Local 1818 (N.C. Monroe), 181 NLRB 48.
Los Angeles Paper Handlers' Local 3 (Gravure West), 181 NLRB 417.
Bulletin Company, 181 NLRB 647.
Carpenters District Council of New Orleans, 182 NLRB 49.
IBEW Local 82, 182 NLRB 59.
Lake County, Indiana Carpenters, 182 NLRB 233.
Int'l Assoc. of Iron Workers, Local 229, 183 NLRB 271.
Norman Fromme d/b/a Fromme Masonry Contractor, 183 NLRB 670.
Rust Engineering Co., 183 NLRB 649.

Laborers, Local 1177 (Nichols Const. Corp.), 183 NLRB 1063.
Loc. Un. 513 Op. Engineers, 183 NLRB 1134.
Local Un. 456, Electrical Workers, 183 NLRB 1277.
Asbestos Workers' Local 40 (Robert A. Keasbey Co.), 184 NLRB 708, enforced, 451 F. 2d 119 (C.A. 2).
Plumbers, Local 60 (Specialty Contractors), 184 NLRB 732, enforced, 79 LRRM 2127 (C.A. 5).
Pacific Maritime Association, 184 NLRB 312, enforced, 452 F. 2d 8 (C.A. 9).
Asbestos Wkrs. Local 53 (McCarty & Armstrong), 185 NLRB 642.
Stage Employees, Local 640 (Associated Independent Theatre Co., Inc.), 185 NLRB 552.
Carpenters Local 1440 (Kroger Co.), 186 NLRB 1091.
Everett Construction Co., 186 NLRB 240, vacated, 462 F. 2d 8 (C.A. 5).
Local 928, ILA (Marine Materials Handling Corp.), 186 NLRB 1044.
Local 1098, Carpenters (Chauncey Construction Co., Inc.), 186 NLRB 385.
Operating Engineers, Local 302 (Rex Wyatt), 186 NLRB 21.
Waitresses' Union 276, Hotel & Restaurant Employees (President Motor Inn), 186 NLRB 484.
Local 58, Plumbers (Heyse Sheet Metal), 187 NLRB 152.
Local 825, Operating Engineers (Associated General Contractors of New Jersey), 187 NLRB 50.
Walter J. Barnes Electrical Co., Inc., 188 NLRB 183.
Plumbers, Local 100 (McCalley Co.), 188 NLRB 951, enforced, 491 F. 2d 1104 (C.A. 5).
Teamsters Local 70 (Calif. Trucking Assn.), 188 NLRB 305.
Carpenters, Local 1913 (Michael R. Amato), 189 NLRB 521, enforced, 464 F. 2d 1395 (C.A. 9).
Local 117, Carpenters (Peter Kiewit Sons' Co.), 189 NLRB 690.
Operating Engineers, Local 406 (General Contractors), 189 NLRB 255.
Iron Workers, Local 377 (Richard J. Bettencourt, an Indiv.), 189 NLRB 68, enforced, 454 F. 2d 1175 (C.A. 9).

**Brewery Drivers, Local 133 (St. Louis Stag Sales, Inc.),* 190 NLRB 766.

Glazier's Local 1075, Painters (Carr Glass and Paint Co.), 190 NLRB 388.

Asbestos Workers, Local 5 (Insulation Specialties Corp.), 191 NLRB 220, enforced, 464 F. 2d 1394 (C.A. 9).

Construction and General Laborers' Union Local 304, Laborers' Int'l U. or N.A., 191 NLRB 764.

Truitt Construction Co., 191 NLRB 508, enforced, 473 F. 2d 816 (C.A. 9).

J. Willis & Son Masonry, [illegible] NLRB 872.

Iron Workers, Local 426 (Tryco Steel Corp.), 192 NLRB 97, enforced, 81 LRRM 2479 (C.A.D.C.).

Longshoremen's & Warehousemen's Union, Local 13 (Pacific Maritime Assn.), 192 NLRB 260.

**Pacific Maritime Assn.,* 192 NLRB 338.

Pile Drivers Local 2375, Carpenters (Frank Thomas Dennison, Jr.), 192 NLRB 314.

John Armer Air Conditioning Co., 193 NLRB 295.

Encinal Terminals, 193 NLRB 362.

Iron Workers, Local 751 (Red-E-Steel Co.), 193 NLRB 665.

J. Livingston & Co., 193 NLRB 869.

Millwright Local Union 1311 Carpenters (American Riggers, Inc.), 193 NLRB 995.

Teamsters, Local 525 (Nelson Constr. Co., Inc.), 193 NLRB 724.

Local 851, ILS (John H. Biggers), 194 NLRB 1027.

Metropolitan District Council, Carpenters, Phila., 194 NLRB 159.

Sheet Metal Workers', Local 361 (Langston & Co., Inc.), 195 NLRB 355, enforced, 477 F. 2d 675 (C.A. 5).

Local 481, Electrical Workers (Amick Electric Co.), 196 NLRB 104.

Chicago Local No. 245, Lithographers and Photoengravers International Union (Alden Press), 196 NLRB 720, enforced, 83 LRRM 2957 (C.A. 7).

International Longshoremen's Assn. Local 1581, 196 NLRB 1186, enforced, 489 F. 2d 635 (C.A. 5).

Ironworkers, Local 10 (Guy F. Atkinson Co.), 196 NLRB 712, enforced, 83 LRRM 2409 (C.A. 8).

Laborers' Local 573 (F.F. Mengel Construction Co.), 196 NLRB 440, enforced, 83 LRRM 2988 (C.A. 7).

Local 542, 542-A & 542-B Operating Engineers (William E. Ciavaglia), 196 NLRB 1, enforced, 485 F. 2d 387 (C.A. 3).

Plumbers and Steamfitters Local 577, Plumbers (A. J. Stockmeister, Inc.), 196 NLRB 124.

Local Lodge 40, Boilermakers (Riley-Stoker Construction Co.), 197 NLRB 738.

Operating Engineers, Local 513 (McFry Excavating & Demolition Co.), 197 NLRB 1046.

Directors Guild of America, 198 NLRB 707, enforced, 494 F. 2d 692 (C.A. 9).

Wood, Wire and Metal Lathers Union, Local 57 (Mancini and Klimchuck Co.), 198 NLRB 978.

Chauffeurs & Helpers Local 50, a/w Teamsters (Shaw Contractors & Builders), 199 NLRB 1188.

Local 40, Sheet Metal Workers' (Capitol Ventilating Co.), 199 NLRB 1058.

**Operating Engineers, Local 513 (S. J. Groves and Sons Co.),* 199 NLRB 921, enforced, 85 LRRM 2303 (C.A. 8).

Castleman and Bates, 200 NLRB 477, enforced, 87 LRRM 3274 (C.A. 1).

Lower Ohio Valley District Council of Carpenters, Millwright Local No. 1080 (Commercial Contracting Corp.), 201 NLRB 882.

Meat Cutters Local 576 (Westfield Thriftway Super-Market), 201 NLRB 922, enforced, 85 LRRM 2303 (C.A. 10).

Sheet Metal Workers Local 127 (Hampden Sheet Metal Co.), 201 NLRB 349.

Austin & Wolfe Refrigeration, Air Conditioning & Heating, Inc., 202 NLRB 135.

Seafarers International Union (Isthmian Line, Inc.), 202 NLRB 657, enforced, 496 F.2d 1363 (C.A. 5).

Carpenters, Local 64 (Billy Smith), 204 NLRB 590, reversed, 497 F. 2d 1335 (C.A. 6).

Elevator Constructors, Local 6 (R. A. Jameson), 204 NLRB 578, enforced, 85 LRRM 2768 (C.A. 3).

Operating Engineers, Local 18 (William F. Murphy), 204 NLRB 681, reversed 496 F. 2d 1308 (C.A. 6).
Teamsters Local 294 (Leo F. Lester), 204 NLRB 700, enforced, 90 LRRM 2843 (C.A.D.C.).
Heavy Construction, Local 663 (Robert A. Treuner Construction Co., et al.), 205 NLRB 455.
Laborers', Local 83 (Fry, Inc.), 205 NLRB 399, enforced, 497 F. 2d 1337 (C.A. 6).
Longshoremen's and Warehousemen's Union, Local 27 (Port Labor Relations Committee), 205 NLRB 1141, enforced, 514 F. 2d 481 (C.A. 9).
**Operating Engineers, Local 18 (C.F. Braun Co.)*, 205 NLRB 901, enforced, 500 F. 2d 48 (C.A. 6).
United Derrickmen, Local 197 (Domestic Stone Erectors, Inc.), 205 NLRB 58.
Boilermakers, Local 101, 206 NLRB 30.
***Laborers' Local 207 (A. & E. Construction Co.)*, 206 NLRB 902.
**Sea-Land Service, Inc.*, 207 NLRB 958.
**Teamsters, Local 249 (Philip Quinn)*, 207 NLRB 245.
Boilermakers, Local No. 169, 209 NLRB 140.
Local 705, Teamsters (Associated Transport, Inc.), 209 NLRB 292.
Pacific Maritime Association, 209 NLRB 519.
Ashley, Hickham-UHR Co., 210 NLRB 32.
Longshoremen's and Warehousemen's Local 13 (Pacific Maritime Association), 210 NLRB 952.
***Interseas Bulk Carriers, Inc.*, 211 NLRB 932, 936.
Local 624, Plumbers (Power Piping Co.), 211 NLRB 942.
Standard Fruit and Steamship Co., 211 NLRB 121.
**Asbestos Workers, Local 22 (Rosendahl, Inc.)*, 212 NLRB 913.
**Electrical Workers, Local 309 (R. Dron Electrical Co. Inc.)*, 212 NLRB 409.
Local 798, N.Y. Painters (Nassau Div. of Master Painters Assoc. of Nassau-Suffolk Counties, Inc.), 212 NLRB 615.
Marquette Cement Mfg. Co., 213 NLRB 182.
Teamsters, Local 631, Chauffeurs (Associated Freight Lines), 213 NLRB 600.

Local 440, South Atlantic and Gulf Coast District, Int'l Longshoremen's Association (Clovis Harrison), 214 NLRB No. 95.
Utility and Industrial Construction Co., 214 NLRB No. 152.
Bechtel Power Corp., 215 NLRB No. 109.
**Longshoremen's Assn., Local 814 (West Gulf Maritime Assn.)*, 215 NLRB No. 86.
Nassau-Suffolk Chapter of the National Electrical Contractors' Assn., Inc., and Alcap Electrical Corp., 215 NLRB No. 125.
Boston Cement Masons and Asphalt Layers Union No. 534 a/w Plasterers (Duron Maguire Eastern Corp.), 216 NLRB 568.
Construction and General Laborers' Local 596 (Leo J. Hood Mason Contractors, Inc.), 216 NLRB 778.
**Retail Clerks, Local 1222 (Lucky Markets of San Diego, Inc.)*, 217 NLRB No. 48.

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